

## Internal Revenue Service

Number: **201432004**

Release Date: 8/8/2014

Index Number: 2642.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-141510-13

Date:

March 19, 2014

In Re:

### Legend

Grantor	=
Child 1	=
Child 2	=
Child 3	=
Trust	=
Trustee	=
Accounting Firm	=
Attorney	=
Date 1	=
Year 1	=
Year 2	=

Dear :

This is in response to a letter from your authorized representative dated September 12, 2013 requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

### Facts

The facts and representations submitted are summarized as follows: Grantor established Trust, an irrevocable trust, on Date 1, in Year 1, a date prior to December 31, 2000. Trust was created for the benefit of Child 1, Child 2, and Child 3 and their descendants. Trust was funded with stock. No additional transfers have been made to Trust.

Article 1 provides in part that during Grantor's lifetime, the Trustee, in his sole discretion may pay all of so much of the income of Trust as the trustee deems advisable

to any of Grantor's descendants. In addition to income, Trustees may, in his sole discretion, pay or apply principal for the use or benefit of any of Grantor's descendants.

At Grantor's death, Trust is to be divided into as many equal shares to provide one share for each child then living, and one equal share for the then living descendants of a deceased child of Grantor. Trust terminates 21 years after the death of the last to survive of Grantor's descendants as shall be living on the date of execution of Trust.

Accounting Firm prepared the Form 709 United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1. Grantor's Year 1 Form 709 reflected the gift, however, it reported the gift as being made to the wrong trust and Accounting Firm did not allocate any of Grantor's GST exemption to Trust.

The error was discovered in Year 2 when Attorney reviewed Grantor's Form 709 and discovered that the gift was reported to the wrong trust and that no GST exemption had been allocated to the Year 1 transfers. When Attorney realized that Accounting Firm had not allocated Grantor's available GST exemption to the Date 1 transfer to Trust, he notified Accounting Firm. Consequently, Accounting Firm advised Grantor to make a late allocation of Grantor's GST exemption to Trust. Accounting Firm then prepared and filed the Year 2 Form 709 on which a late allocation of Grantor's GST exemption was made to Trust.

Grantor signed an affidavit stating that he discussed the GST tax with his tax advisors and was informed that making an allocation of his GST exemption to Trust would result in Trust being exempt for the GST tax. Accountant signed an affidavit stating that Accounting Firm erroneously reported the gift to the wrong trust and did not allocate any of Grantor's GST exemption to Trust.

You have requested an extension of time to allow Grantor to make an election under § 2642(g)(1) to allocate GST exemption to the transfer to Trust in Year 1, effective as of the date of the transfer to Trust. In addition you have requested a ruling that the Year 2 late allocation of Grantor's GST exemption to Trust is void.

### Law and Analysis

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual

is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor is granted an extension of time of 120 days from the date of this letter to make an allocation of his available GST exemption, with respect to his Year 1 transfer to Trust. The allocation will be effective as of the respective date of the transfer to Trust and the value of the transfer to Trust as determined for federal gift tax purposes will be used in determining the amount of Grantor's GST exemption to be allocated to the trusts.

This allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

Because the allocation will be effective as of Date 1, the allocation will be deemed to precede in time the allocation Grantor made on the Form 709 filed in Year 2. To the extent Grantor's allocation exceeds the amount necessary to obtain an inclusion ratio of zero with respect to Trust under § 25.2632-1(b)(4)(i), such allocation is void.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

---

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: